

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Docket No.: 06 CA 11370 MLW

Christine Varad,
Plaintiff,
v.

Reed Elsevier Incorporated,
d.b.a. LexisNexis, LexisNexis Risk &
Information Analytics Group, Inc.,
Defendant.

FILED
Clerk's Office
USDC, Mass.
Date 8-1-07
By KTB
Deputy Clerk

Leave to
filed
granted
on
8-1-07

**PLAINTIFF'S BRIEF RESPONSE TO "DEFENDANT'S OPPOSITION TO PLAINTIFF'S
MOTION TO JOIN THE "MAINE BOARD OF BAR EXAMINERS" AS A DEFENDANT."**

1. Defendant Reed Elsevier, Inc. ("Reed"), claims that Varad failed to comply with Local Rule 15.1, which requires that when adding a party pursuant to Fed. R. Civ. P. 15, a copy of the motion to add that party must be served on the proposed new party at least ten days prior to filing of any Fed. R. Civ. P. 15 motion requesting that the court allow an addition of that party by an amendment to the complaint adding that party.

Christine Varad v. Reed Elsevier Incorporated

Doc. 62

Plaintiff responds by stating that she has not requested that this Court allow a Fed. R. Civ. P. 15 amendment to her complaint adding the Maine Board of Bar Examiners as a defendant and therefore, Varad has not invoked any subsequent requirement of compliance with Local Rule 15.1 concerning serving a proposed party to be added to a complaint pursuant to Rule 15 with related documents pursuant to Local Rule 15.1.

Varad has requested that this Court allow the Maine Board of Bar Examiners to be joined as a defendant pursuant to the requirements of Fed. R. Civ. P. 21. The appropriateness of joining the Maine Board of Bar Examiners to the instant action is left to the court to determine in light of justice and fairness pursuant to the requirements of Fed. R. Civ. P. 21. The Court reviews different standards when considering the appropriateness of allowing the joinder of a party pursuant to Rule 21 than are considered in a simple Rule 15 request to amend a complaint by adding a new party.

Varad reasonably concluded that requirements of Loc. Rule 15.1 did apply to her Rule 21 request to this Court to join of the Maine Board of Bar Examiners as a party where the language of Loc. Rule 15.1 specifically addresses only the "addition of new parties" by submission of a Fed. R. Civ. P. 15 motion requesting an amendment adding a new party. Local Rule 15.1 does not specifically include in its scope the submission of a Rule 19, 20 or 21 motion requesting the "joining" of a new party pursuant to those rules. Defendant's proposed application of Local Rule 15.1 is overbroad and not supported by the specific language of Rule 15.1.

2. This Court entered an order on June 21, 2007 denying Varad's motion to compel Reed to produce discoverable documents. Varad served "*Plaintiff Varad's First Set of Interrogatories Addressed to Defendant, Reed Elsevier, Incorporated, d.b.a. LexisNexis, LexisNexis Risk and Information Analytics Group, Inc.*," a few days after she was on notice of the order. Even on June 21, 2007, after entry of that discovery order, there were not thirty full days left before the end of the designated period for discovery but the Court suggested that Varad was still able to serve Reed with interrogatories during the hearing on her motion to compel.

Fairness and justice would seem to require that where Reed artfully used the designated discovery period time to delay and then circumvented all of Varad' valid and reasonable requests for discovery, it should not thereafter be allowed to claim a prejudice by discovery "time period" constraints as a basis for a disingenuous excuse for its failure to respond to Varad's timely submitted interrogatories pursuant to Fed. R. Civ. P. 33.

3. Varad's motion to join the Maine Board of Bar Examiners as a defendant produced produced admissible evidence in attached exhibits to show that the Board maintained a contractual relation with the Defendant to access databases within Reeds data network group systems. Varad has produced admissible evidence to prove that the contract was to be used to

"verify applicant's for bar examination." See: Varad's Motion to Join Maine Board of Bar Examiners, Exhibit B, page 1.

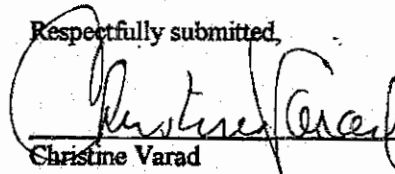
Varad has sustained her burden of proof by providing a preponderance of evidence showing that the Board contracted to regularly access Reeds databases to verify applicants taking the Bar examination in that state. Varad was such an applicant, that fact is not contested. It is reasonable to make the inference that the Board access Reed's database systems under that contract to verify Varad's application.

The burden of proof must shift to Reed to prove with admissible evidence that they did not make their databases available under contract to the Maine Board of Bar Examiners concerning verification of Varad's bar application. And similarly, the burden of proof must shift to the Maine Board of Bar Examiner to provide this court with admissible evidence that it did not access Reed's database systems to verify Varad's bar application.

Making an unsupported statement alone concerning access of those databases is merely inadmissible hearsay and will never supply the necessary burden of proof to rightfully prevail. Many, many a criminal or murderer has tried making similar claims concerning his actions to a state's attorney general's office, but as the state well knows, it will take much, much more than that to support that claim at trial.

July 29, 2007

Respectfully submitted,



Christine Varad
P.O. Box 583
Milton, Massachusetts 02186
781 583 7117